

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

VOLVO FINANCIAL SERVICES,
a division of VFS US LLC,

Plaintiff,

v.

DAVID L. HOUSTON,

Defendant.

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Civil Action File No. _____

VERIFIED COMPLAINT

Volvo Financial Services, a division of VFS US LLC (“Plaintiff”), by and through its counsel, files this Verified Complaint against David L. Houston (“Defendant”) as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over these proceedings pursuant to the provisions of 28 USC § 1332(a)(1), because there is complete diversity of citizenship between the parties to this action and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs. Venue is proper in this district pursuant to 28 USC § 1391, because a substantial amount of the events or omissions giving rise to this claim occurred in this district.

PARTIES

2. Plaintiff is a limited liability company formed under the laws of the State of Delaware with its principal place of business located in Greensboro, North Carolina, whose sole member, VNA Holdings, Inc., is a Delaware Corporation.

3. Upon information and belief, Defendant David L. Houston is a citizen of the State of Georgia. Defendant is not in the military, as shown by the Status Report from the Department of Defense Manpower Data Center, attached as **Exhibit A**.

FACTS

Financing Agreements, Collateral, and Security Interests

4. On or about December 6, 2016, Defendant executed that certain Credit Sales Contract (Security Agreement) (the “Contract”) through which Defendant borrowed the principal amount of \$632,042.40 from Plaintiff to finance its purchase of the following:

Year	Make	Model	VIN/Serial Number Ending In
2016	Volvo	VNL64T 670	4V4NC9EH7GN962006
2016	Volvo	VNL64T 670	4V4NC9EH9GN962007
2016	Volvo	VNL64T 670	4V4NC9EH0GN962008
2016	Volvo	VNL64T 670	4V4NC9EH2GN962009

(the “Equipment”). Defendant agreed to repay the amount borrowed, plus interest, in 60 monthly payments of \$10,534.04. A true and correct copy of the Contract is

attached hereto as **Exhibit B** and incorporated herein.

5. In order to secure the payment of all sums due under the Contract, as well as all other debts and obligations at any time owed by Defendant to Plaintiff, Defendant granted Plaintiff a security interest in the Equipment and “all present and future attachments, accessions, replacements, parts, repairs, additions, substitutions, chattel paper, and proceeds, including amounts payable under any insurance policies” (collectively, the “Collateral”).

6. On or about December 6, 2016, all rights and interests in the Collateral as provided for in the Contract were assigned to Plaintiff. A true and correct copy of the Assignment is attached hereto as **Exhibit C** and incorporated herein. In addition, the Contract acknowledges the assignment of the Contract to Plaintiff.

7. On or about August 21, 2019, Defendant and Plaintiff entered into that certain Modification Agreement (the “Modification”) amending certain provisions of the Contract. Pursuant to the Modification, Defendant agreed to repay the remaining principal balance, plus accrued and accruing interest and late fees, through two (2) consecutive monthly installment payments of \$0, followed by one (1) monthly installment payment of \$1,975.13, and followed by thirty-four

(34) monthly installment payments of \$8,027.24. A true and correct copy of the Modification is attached hereto as **Exhibit D** and incorporated herein.

Default

8. Pursuant to the terms of the Contract and Modification, Defendant is in default if it, among other things, fails to pay any amount due under obligations to Plaintiff under any agreement, contract or indebtedness of any kind. Upon default, Plaintiff may, at its option, declare all indebtedness due to Plaintiff immediately due, and, without notice, demand or legal process, take possession of the Collateral.

9. Defendant defaulted under the terms of the Contract and Modification by, *inter alia*, failing to remit the payments due under the Contract and Modification.

10. The current balance due under the Contract is \$78,519.22.

COUNT I – BREACH OF CONTRACT BY DEFENDANT

11. Plaintiff repeats and realleges paragraphs 1 through 10 hereof, as if fully set forth herein.

12. On or about September 16, 2019, the Contract and Modification came into default by virtue of Defendant's failure to make payments when due in accordance with the Contract, Modification, and any amendments related thereto.

13. The Contract and Modification have been in default since September 16, 2019.

14. Plaintiff has notified Defendant in writing that the Contract and Modification were in default, and Plaintiff has accelerated the balance thereunder. Copy of such notice dated November 8, 2021 is attached hereto as **Exhibit E** and incorporated herein.

15. As of October 27, 2021, the Contract and Modification has an outstanding balance of \$78,519.22, exclusive of legal fees and expenses (the “Contract Balance”) itemized as follows:

Principal Balance	\$242,452.03
Interest	\$6,542.81
Late Charges	\$2,512.68
Insurance Deficiency	\$2,500.00
<u>Less: Anticipated Payments from Guarantor</u>	<u>(\$175,488.30)</u>
Total Due	\$78,519.22

16. The Contract continues to accrue interest after November 4, 2021 at the rate specified in the Contract, currently \$33.48 per day.

17. As a result of the breach by Defendant, Plaintiff has been damaged in the aggregate amount of \$78,519.22, with additional damages to be proven based upon the facts alleged herein, including but not limited to interest, costs, and attorneys’ fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests this Court enter judgment in their favor and against Defendant as follows:

- i. For damages in favor of Plaintiff and against Defendant, in the amount of \$78,519.22, plus continuing interest, attorneys' fees and costs and other damages as allowed in all pertinent agreements and laws;
- ii. Any further legal and equitable relief this Court deems just and proper.

Dated: November 22, 2021

Respectfully submitted,

/s/ Kathleen G. Furr

KATHLEEN G. FURR

Georgia Bar No. 589008

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**Counsel for Volvo Financial Services,
a division of VFS US LLC**

VERIFICATION

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

Tara Disher Maxey, being duly sworn, states that (s)he is a duly authorized agent of the corporate plaintiff bringing the foregoing Verified Complaint, and that, as such, (s)he has read the Verified Complaint, and that (s)he has personal knowledge of the facts set forth therein, and knows the facts and circumstances set forth therein to be true and complete, both in substance and in fact, to the best of his/her knowledge and belief.

Volvo Financial Services,
a division of VFS US LLC

By: 
Tara Disher Maxey

SUBSCRIBED AND SWORN TO BEFORE ME on this the 16th day of November, 2021.


NOTARY PUBLIC/STATE OF NORTH CAROLINA



My Commission Expires: 10/5/2026